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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CORUS REALTY HOLDINGS,
11 INC.,

12 Plaintiff,

13 v.

14 ZILLOW GROUP, INC., et al.,

15 Defendants.

16 CASE NO. C18-0847JLR

17 ORDER REGARDING ORAL
18 ARGUMENT

19 On February 7, 2020, the court set a hearing for February 14, 2020, to hear oral
20 argument on Defendants Zillow Group, Inc., Zillow, Inc., and Trulia, LLC's
21 (collectively, "Zillow") motion for summary judgment (Zillow MSJ (Dkt. # 68)) and
22 Plaintiff Corus Realty Holdings, Inc.'s ("Corus") motion for partial summary judgment
regarding invalidity (Corus MPSJ (Dkt. # 65)). (*See* 2/7/20 Dkt. Entry.) In addition to
the merits of the respective motions, the parties should be prepared to provide the court
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1 with additional citations to authorities, if warranted, and to address the following issues at
2 the February 14, 2020, hearing:

3 (1) Whether the court should dismiss Zillow's counterclaim for a declaratory
4 judgment of noninfringement as moot if the court grants summary judgment in favor of
5 Zillow on Corus's infringement claim. *See Sliding Door Co. v. KLS Doors, LLC*, No.
6 EDCV 13-00196 JGB, 2013 WL 2090298, at *4 (C.D. Cal. May 1, 2013) (dismissing a
7 defendant's counterclaim for declaratory judgment of noninfringement as duplicative of
8 the plaintiff's infringement claim because the counterclaim did "not serve any useful
9 purpose"); *see also Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191,
10 198 (2014) (holding that in a declaratory judgment action for noninfringement, "the
11 burden of persuasion is with the patentee, just as it would be had the patentee brought an
12 infringement suit");

13 (2) Which of the following actions the court should take with respect to Zillow's
14 counterclaim for a declaratory judgment of invalidity if the court grants summary
15 judgment in favor of Zillow on Corus's infringement claim:

16 (a) Dismiss the counterclaim without prejudice;
17 (b) Stay the counterclaim and entertain a motion for entry of final judgment of
18 Corus's infringement claim pursuant to Federal Rule of Civil Procedure 54(b); or
19 (c) Hear the claim on its merits.

20 *See, e.g., Korszun v. Pub. Techs. Multimedia, Inc.*, 96 F. App'x 699, 700 (Fed. Cir. 2004)
21 (holding that where a district court has granted summary judgment of noninfringement,
22 the district court may hear an invalidity counterclaim on the merits, dismiss the

1 counterclaim, or, where proper, enter judgment under Federal Rule of Civil Procedure
2 54(b)); *see also Nystrom v. TREX Co.*, 339 F.3d 1347, 1351 (Fed. Cir. 2003); *Nautilus*
3 *Grp., Inc. v. Icon Health And Fitness, Inc.*, 308 F. Supp. 2d 1224, 1226 (W.D. Wash.
4 2003).

5 Dated this 11th day of February, 2020.

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8 JAMES L. ROBART
9 United States District Judge
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